

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

PAUL CARNEY,

Plaintiff,

v.

C. WARNER, *et al.*,

Defendants.

No. C08-5653 BHS/KLS

**REPORT AND RECOMMENDATION  
NOTED FOR: May 14, 2010**

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff Paul Carney moves the court to grant a dismissal of his action. Dkt. 52. Defendants have not filed a response to the motion. Accordingly, the undersigned recommends that this action be dismissed pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

*DISCUSSION*

Mr. Carney's civil rights petition was transferred to this court from the Eastern District of Washington on October 28, 2008. Dkt. 6. Mr. Carney filed an Amended Complaint on February 20, 2009 and the court directed service of the Amended Complaint. Dkts. 11 and 12. Defendants filed their Answer on May 26, 2009 and June 1, 2009. Dkts. 20 and 22. Defendants do not assert any counterclaims against Plaintiff in their Answers. The court issued a Pretrial Scheduling Order on June 16, 2009. Dkt. 24.

1 On September 23, 2009, Defendant Warner filed a motion to dismiss. Dkt. 30. The  
2 motion to dismiss was converted to a motion for summary judgment and renoted. Dkt. 35. On  
3 January 26, 2010, the undersigned recommended that Defendant Warner's motion for summary  
4 judgment be granted and the district court adopted the recommendation on February 26, 2010.  
5 Dkt. 48. In the meantime, the remaining defendants filed a motion for summary judgment on  
6 February 5, 2010. Dkt. 44. Defendants seek dismissal of Plaintiff's claims, with prejudice, on  
7 the grounds that the claims are barred by the statute of limitations and for failure to state a claim.  
8 *Id.* The court has not ruled on this motion.  
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10 On March 24, 2010, Mr. Carney filed his motion for voluntary dismissal, noted for April  
11 16, 2010. Dkt. 52. Mr. Carney states that he wishes to abandon his action due to medical  
12 problems and difficulty obtaining records and witnesses. Dkt. 52. Defendants did not file a  
13 response to the motion.  
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15 Under Rule 41(a)(1), a plaintiff may dismiss an action without court order either by filing  
16 a notice of dismissal before the opposing party serves either an answer or a motion for summary  
17 judgment; or a stipulation of dismissal is signed by all parties who have appeared. Fed.R.Civ.P.  
18 41(a)(1). Rule 41(a)(2) provides, in pertinent part:

19 Except as provided in Rule 41(a)(1), an action may be dismissed at the  
20 plaintiff's request only by court order, on terms that the court considers proper. If  
21 a defendant has pleaded a counterclaim before being served with the plaintiff's  
22 motion to dismiss, the action may be dismissed over the defendant's objection  
23 only if the counterclaim can remain pending for independent adjudication. Unless  
24 the order states otherwise, a dismissal under this paragraph (2) is without  
25 prejudice.

26 Fed.R.Civ. P. 41(a)(2).

Defendants have filed no counterclaims. Dkts. 20 and 22. Defendants have filed no  
opposition to Mr. Carney's motion to voluntarily dismiss his claim.

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*CONCLUSION*

The Court should dismiss this action without prejudice. This report and recommendation then moots the Defendants' motion for summary judgment (Dkt. 44) and the motion should be **STRICKEN** from the court's docket.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **May 14, 2010**, as noted in the caption.

DATED this 21st day of April, 2010.

  
Karen L. Strombom  
United States Magistrate Judge